

Internal Revenue Service
memorandum

CC:TL:Br2
RLOsborne

date: JUL 18 1988

to: District Counsel, Omaha, Nebraska MW:OMA
Attn: Robert Archambault

from: Director, Tax Litigation Division CC:TL

subject: [REDACTED]

This responds to your request of July 7, 1988, for technical advice on the following issue.

Issue

Who is the proper party to sign consent forms extending the statute of limitations for assessment of taxes owed by the members of the group of which [REDACTED] was the common parent?

Facts

For several years prior to [REDACTED], [REDACTED] ("[REDACTED]") owned [REDACTED] % of the stock of [REDACTED], which in turn owned [REDACTED] % of [REDACTED] subsidiaries. For the [REDACTED] tax year, [REDACTED] and the [REDACTED] subsidiaries filed a consolidated return for the group of which [REDACTED] was the common parent. Pursuant to Internal Revenue Code Section 1504(b)(2), [REDACTED] could not be an includible corporation within that group, because it is a life insurance company.

In [REDACTED], [REDACTED] merged into [REDACTED]. Neither [REDACTED] nor the subsidiaries designated a new agent for the group. Under Section 21-2075(2) of the Nebraska Revised Statute, [REDACTED] ceased to exist as a separate corporate entity. Under Section 20-2075(4) and (5), [REDACTED] received [REDACTED]'s assets, including [REDACTED]'s stock in its [REDACTED] subsidiaries, and succeeded to [REDACTED]'s rights and liabilities. Around that same time, [REDACTED] satisfied the 5-year rule under IRC Section 1504(c)(2)(A), and is now filing as the common parent of the new group.

The IRS has been conducting an audit of the [REDACTED] group ([REDACTED]) for the [REDACTED] tax year. The statute of limitations for assessment for that group will expire in [REDACTED]. The Service is attempting to determine who should sign whatever consent forms are necessary to extend the assessment period.

08567

Discussion

Because the old common parent, [REDACTED], terminated its separate corporate existence in [REDACTED], and neither [REDACTED] nor the subsidiaries designated a new agent, the group agency itself has terminated for consolidated return purposes. Treas. Reg. 1.1502-77(d). Accordingly, each member must sign a separate Form 872. Since [REDACTED] is no longer in existence, [REDACTED] must sign as successor and transferee on behalf of [REDACTED]. [REDACTED]'s power to act in this capacity is determined under Nebraska Revised Statute Section 21-2075(4) and by the terms of the [REDACTED] merger agreement, and not under the consolidated return regulations.


Conclusion

In light of the discussion above, the following forms should be executed:

1. A Form 872, signed by a [REDACTED] officer, for the taxpayer [REDACTED], successor to [REDACTED], a member of the affiliated group, [REDACTED].
2. A Form 977, signed by a [REDACTED] officer, for the taxpayer [REDACTED], transferee of [REDACTED], a member of the affiliated group, [REDACTED].
3. A separate Form 872 for each subsidiary, signed by an officer of the subsidiary. We understand that the District Counsel attorney, Robert Archambault, has already advised Exams to obtain a separate form for each subsidiary, as an affiliate of the consolidated group of [REDACTED],^{1/} which should be sufficient.

MARLENE GROSS

By:


ALFRED C. BISHOP, JR.
Chief, Branch No. 2
Tax Litigation Division

^{1/}. If [REDACTED]'s own separate tax return is also under audit, and an extension is necessary, a separate Form 872 should be obtained for [REDACTED] in its own right, signed by a [REDACTED] officer.